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Senate Judicial Proceedings Committee

Senate Bill 594 – Child Custody and Visitation – Abuse or Neglect of Child

Senate Bill 594 is intended to clarify that a court is required to articulate and explain its finding that there is no likelihood of further child abuse or child neglect by a party in a custody or visitation proceeding when there is evidence that abuse and/or neglect has occurred in the past. . Family Law 9-101 is often misunderstood, and the need for this bill arose because of case law that seems confounded with the text of the code that was designed to protect children from abuse.

Over the interim, through conversations started during a workgroup surrounding the larger issue of abuse and child custody, our office began to dig into this issue. This bill seeks to be a clarification of the standard created after the 1984 Shubin/Winegrad Governor's Task Force on Child Abuse and Neglect. FL 9-101 has already been clarified once to refer to the specific care required for supervised visitation, but otherwise it is the same language from the 1984 task force; the language needs further updates and clarity to best protect our child victims of abuse and neglect.

The Court of Appeals in ***Baldwin v. Baynard**, 215 Md. App. 82 (2013)* interpreted this section of code in combination with the court's authority under common law best interest of the child factors. However, as the sole codified section of code, specific steps must be taken by the trial court to determine custody and visitation cases when there are reasonable grounds abuse occurred, the trial courts must state their reasoning and finding of facts to make the determination that there is no likelihood of further abuse. The Court should also state if any other factors are somehow relevant to that determination, although without explaining how the

child would be protected, those other factors should be irrelevant and mute under existing code, and the clarifying legislation before you today.

Too often, the findings of fact and reasoning of the court is not articulated for the record. Delegate Dumais has worked for years with the Judiciary to try and codify all of the Best Interest of the Child factors, and require the judges to articulate their findings of fact. We find these efforts to be complimentary, but while those factors the court "may" consider – FL 9-101 *must* be considered, and we want to have the judge articulate how they considered the safety of the child. Parents and children deserve to know the reasoning as to why abuse would "not" likely occur, and what other factors were taken into account when determining custody.

We are aware of the concerns the Family Law Section of the MSBA has with the neutral and physically present supervision language. To move forward with the main purpose of the bill, which is the required articulated rationale of findings, we are willing to push the supervised visitation clarification back to the workgroup to examine more nuanced approaches to our concerns on the visitation side of this statute. There are serious concerns, but this topic is more complicated, and perhaps requires more than a mere clarification.

This is a complicated subject, but the purpose of the statute was clearly established in the 1980. Unfortunately, the Courts have failed to adequately apply the law to the facts we have been seeing, so we are here to assist their challenging role through this clarification language. Having the reasoning on record helps to make a case for an appeal and more importantly, it provides interested parties a better understands as to why a life altering decision is being made. With many pro se litigants, we should endeavor to make our law in this area as clear as possible. That clarify should highlight our top public policy goal, to protect children from abuse. SB 594, as amended, moves towards our goal, without moving the goal posts.

For these reasons, I respectfully request a favorable report on SB 594, as amended.